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U.S. DEPARTMENT OF LABOR
Manpower Administration
Washington, D. C. 20210.

March 29, 1972

UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 1177

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

SUBJECT: Experience Rating--Classification of Employers Who
Recapture Experience From a Prior Period of Coverage

PURPOSE: To announce a new decision regarding the status of
employers who recapture experience from a prior
period of coverage, superseding UIPL No. 427.

Amendments in P.L. 91-373 to the Federal Unemployment Tax Act have renewed interest in the question of the conditions under which employers who were once subject to a State unemployment compensation law and again become subject to such law may recapture prior experience. Upon reconsideration, it has now been concluded that the decision reached in 1956 concerning these conditions, as announced in UIPL No. 427, dated May 31, 1956, should be changed.

The extension of coverage in 1954 to firms employing four or more workers, and the amendment of section 3303(a) of the Federal Unemployment Tax Act to permit State unemployment compensation laws to provide for reduced rates for new and newly covered ^{1/} employers after one year, rather than three years of experience immediately preceding the applicable computation date, led to consideration of the question whether an employer who had once been subject to a State law and again became subject to the State law could recapture his experience from the prior period of coverage and receive a reduced rate after as little as one year of experience in his current period of coverage.

1/ The 1954 amendment to section 3303(a) refers to employers who have "not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by" section 3303(a)(1) on the basis of three years of experience. This term "new and newly covered employers" is used to characterize all employers who meet the quoted statutory description including employers who are subject for the first time because they are new entities or because of statutory extension of coverage and employers who have again become subject to the State UI law following a prior period of subjectivity which had been legally terminated.

This question arises again by reason of the Employment Security Amendments of 1970 (P.L. 91-373) which extended coverage to firms employing one or more workers (or those with a quarterly payroll of \$1,500 or more), and which amended section 3303(a) of the Federal Unemployment Tax Act to permit State unemployment compensation laws to provide reduced rates (not less than one percent) on a reasonable basis other than experience to new or newly covered employers.

UIPL No. 427, dated May 31, 1956, announced the decision reached at that time that a State law may permit or require an employer to recapture prior experience, but that in such circumstances the employer would not be a new or newly covered employer within the category intended to be benefited by the 1954 amendment to section 3303(a), and the employer, therefore, must be required to have three years of experience in his current period of subjectivity before he may qualify for computation of a reduced rate.

Upon reconsideration, the Assistant Secretary for Manpower has concluded that a State law may, consistently with section 3303(a), treat a recapturing employer as a new or newly covered employer. The mere fact that an employer recaptures experience from a prior period of subjectivity does not preclude his being treated as a new or newly covered employer when he again becomes subject to the State law. This is indicated in the legislative history of the 1954 amendment, in that one of the stated purposes of that change was to ease the hardships on veterans reestablishing their businesses after serving their country. Both the 1954 and 1970 amendments were enacted in connection with extensions of coverage of the Federal Unemployment Tax Act, and both reflected the intention of Congress not to require that new and newly covered employers be placed at a competitive disadvantage in relation to established employers because of the experience-rating requirements of section 3303(a)(1). Having concluded that a recapturing employer may be treated as a new or newly covered employer, it follows that a reduced rate computed for the employer on the basis of his experience may be based on all of his experience, including his experience from any prior period of subjectivity which he has recaptured pursuant to the State law.

Under section 3303(a) as thus construed, a State law may provide that a recapturing employer may qualify for computation of a rate based on his experience after as little as one year of experience in his new period of subjectivity, if the State law so provides with respect to new and newly covered employers. Similarly, a State law may provide that a recapturing employer, as well as other new and newly covered employers, may qualify for a reduced rate of not less than 1.0 percent on a reasonable basis other than experience until the employer qualifies, pursuant to that State's law, for computation of a rate based on his experience. When the recapturing employer qualifies under the State law for computation of a rate based on his experience, the rate may be computed on the basis of his experience in his new period of subjectivity as well as his experience from any prior period of subjectivity which the employer has recaptured pursuant to the State law.

In accordance with the decision of the Assistant Secretary for Manpower, therefore, a State law may--

- (1) require that all employers recapture any experience from a prior period of subjectivity (whether favorable or unfavorable) and--
 - (a) require that the employer have three years of experience immediately preceding the applicable computation date in his current period of subjectivity before he may qualify for computation of a reduced rate, or
 - (b) permit the employer to qualify for computation of a reduced rate on the same terms and conditions as those that apply generally to new and newly covered employers, i.e., (i) after as little as one year of experience immediately preceding the applicable computation date in his current period of subjectivity, or, if applicable, (ii) be awarded a reduced rate of not less than 1.0 percent on a reasonable basis other than experience until the employer has been subject to the State law for a sufficient period of time to qualify for computation of a rate on the basis of his experience;
- (2) require recapture of prior experience in certain cases, such as in the case of employers whose prior experience account balance is negative, and either permit election of recapture or prohibit recapture in other cases, and treat a recapturing employer in any such cases for rating purposes in the manner set forth in item (1)(a) or (b) above;
- (3) permit each employer to elect whether or not to recapture prior experience, and treat a recapturing employer for rating purposes in the manner set forth in item (1)(a) or (b) above; or
- (4) prohibit the recapture of prior experience by any employer, and treat an employer who was once subject to the State law and again becomes subject to such law in the manner set forth in item (1)(b) above.

There may be additional ways of treating recapturing employers which are consistent with section 3303(a). Consideration will be given to any proposal of this nature upon the request of a State.

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for Manpower and Manpower Administrator